

May 21, 2003

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services file no. **L02VA003**

BRAD AND CORY JOHNSON
Variance Appeal

Location: 134XX 486th Avenue Southeast, North Bend

Appellant: Brad and Cory Johnson, *represented by*
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King County: Department of Development and Environmental Services, *represented by*
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SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:	Deny the variance
Department's Final Recommendation:	Deny the variance
Examiner's Decision:	Deny the variance

EXAMINER PROCEEDINGS:

Hearing Opened:	February 27, 2003
Hearing Closed:	April 10, 2003

The parties waived the appeal review time limits established by KCC 20.24.098, including a one month period following the April 10, 2003 close of hearing.

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

SUMMARY:

Denies variance from sensitive areas buffer area requirements applicable to new residential construction proposal.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. Brad and Cory Johnson are the applicants under the variance application L02VA003 filed on April 23, 2002. Keith Scheunemann is still the property owner. Exhibit No. 29.
2. The subject site contains two wetlands (labeled A and B on exhibit no. 10), a steep slope, access and utility easements, a 30-foot wide flood control maintenance easement, a well house, and an approved area for the on-site sewage disposal system. It borders the Middle Fork Snoqualmie River which requires a 100-foot wide protective buffer (KCC 21A.24.360). The only buildable area outside of any sensitive areas, sensitive area buffers or required setbacks is triangular-shaped. The Applicant contends that this area comprises only 800 to 850 square feet whereas the Department contends that the area comprises approximately 2,200 square feet (located between the required stream buffer and the Wetland 'B' buffer). The site plan submitted by the applicant shows a proposed residence outside of the stream buffer, within the Wetland 'B' buffer. *It does not incorporate the triangular buildable area.*
3. On September 30, 2002, DDES issued a decision denying the variance because, in the Department's judgment, the applicant did not show that the variance would be the *minimum necessary* to grant relief to the applicant, as required in KCC 21A.30.040.J. The Department concluded that a residence could be constructed on the site outside of the stream buffer required by KCC 21A.24.360, with minor wetland buffer averaging in accordance with KCC 21A.24.320.B. Exhibit No. 2 is a copy of the report and decision.
4. On October 17, 2002, Mr. and Mrs. Johnson appealed the variance decision. The appeal does not contest the accuracy of the stream classification assigned to the Middle Fork of the Snoqualmie River (class 1). Nor does it challenge the accuracy of wetland and slope classifications upon which the Department's variance decision is based.
5. There are no code or policy requirements to protect trees on this site outside of sensitive areas and their required buffers.
6. The subject property is one of four lots created through short plat # 486001. See exhibit no. 25, Assessor's map. The short plat includes recorded Covenants, Conditions and Restrictions (CC&R), recorded pursuant to short subdivision final approval and recording in 1987. Exhibit

- no. 28. Article V, Section 9 of the CC&R states that a single family residence within this short plat must contain *not less than 2,000 square feet of livable enclosed floor area, excluding the garage area*, for any single-family residence. CC&R Article IV, Section 1.B.iii(d) states that there shall be no cutting of trees within 100 feet of the river as declared by King County.
7. KCC 21A.44.030.K requires that variances not interfere with covenant rights or responsibilities.
 8. A portion of the Wetland 'B' buffer and stream buffer was cleared without permits or approvals following a windstorm in 1999. Clearing and grading for construction of an access driveway also occurred in the sensitive area buffer. No clearing or grading permit was granted for either activity, a requirement of KCC 16.82.050 and KCC 16.82.060. There is a pending Code Enforcement case on the subject property under file No. E9901457. Exhibit No. 26 is a copy of the letter to Mr. Scheunemann from DDES code enforcement staff, dated May 4, 2000, regarding the sensitive area violation. However, to this date, the Department has not served any notice and order on Scheunemann. Nonetheless, the essential facts of the code enforcement case—that the clearing occurred without required permits within a protected sensitive area and/or buffer—are uncontested in this hearing record.
 9. On February 26, 2002 Land Use Services Division (LUSD) staff held a pre-application meeting with Brad and Cory Johnson regarding construction of a single-family residence on the subject lot. At the meeting, the issues related to the pending code enforcement case together with alternative locations for a residence were discussed with Mrs. and Mr. Johnson. Mr. Scheunemann was not present at this meeting.
 10. A second pre-application meeting was held on March 25, 2003, with Mrs. and Mr. Johnson, Mr. Scheunemann, and Larry Burnstead (consultant to the Applicant) with the LUSD staff to discuss alternative building site locations, and the code enforcement case. Exhibit No. 42 is a print-out of comments recorded in DDES' Permits Plus tracking system by Laura Casey following this meeting and incorporated in this hearing record.
 11. On April 23, 2002, Mrs. and Mr. Johnson submitted application L02VA003 requesting a variance from the wetland and stream buffer requirements in King County Code 21A.24.320.A and 21A.24.360.A.. The request included reduction of the stream buffer from 100 feet to 65 feet and the Wetland 'B' buffer from 50 feet to 35 feet. The applicants submitted various documents in support of the request, including a site plan showing alternative locations ('A', 'B', and 'C'); justification for variance; Sensitive Areas Report prepared by Watershed Dynamics, Inc., dated February 25, 2002; Health Department Approval for the on-site sewage disposal system; the short plat CC&R and a copy of the approved variance on the adjacent lot to the south owned by Mr. Crecca. These documents are all listed as Exhibits.
 12. After the variance application was submitted the applicant requested that LUSD staff evaluate the possibility of buffer averaging at Location 'C'. On June 13, 2002, LUSD staff provided a written response to the buffer-averaging request at Location 'C' (Exhibit No. 44). The letter explained that the proposal did not meet the buffer averaging criteria in 21A.24.320.B and 21A.24.360.B and the applicable Public Rules because 1) the compensatory buffer area was not contiguous with the standard buffer of either the wetland or stream impacted by the development, and 2) there was inadequate documentation to show that it would provide additional protection to the wetland or stream, or enhance the functions of the wetland.

14. The applicant's justification for the variance (Exhibit No. 32) stated that the only available location outside of sensitive areas and related buffers (Location 'B') was not considered suitable for a residence because of its odd shape (triangular) and the fact that the residence could not meet the minimum livable square footage required by the CC&R. The applicant's justification incorrectly refers to the minimum livable square footage as 2,500 square feet. The language in the CC&R requires only 2,000 square feet. Exhibit 28.
15. The applicant proposes a two-story residence with attached two-car garage and a *building footprint* of approximately 2,700 square feet (30 feet by 90 feet), resulting in a potential *living area* of roughly 5,400 square feet. See Exhibit No. 33 for elevations of the structure. The CC&R term "livable enclosed floor area" does not have the same meaning as "building footprint". A structure could have 2000 square feet of livable enclosed floor area with a much smaller building footprint, with one or two stories above the first floor, as noted in John Day Homes, Inc., June 21, 2002 comment letter. Exhibit No. 41.
16. The applicant's justification for Location 'C' states that this location is preferred because it has less impact to the sensitive areas and their buffers than Locations 'A' and 'B' based on the number of the trees required to be removed, and it would meet the CC&R structure size requirements. However, that argument does not address the CC&R requirement prohibiting the removal of trees within 100 feet of the River. Exhibit 28. Nor does it address the fact that the "fewer trees to remove" (site 'C') are located within the protected area and the "greater number of trees to remove" (site 'B') are located within the unprotected, unregulated area.
17. An abutting lot owner (Crecca) received a variance for residential construction in 1990. Exhibit no. 24. The Johnsons cite this variance as a matter of equal protection. Exhibit no. 24, Variance L91VA087. The Crecca's variance proposal was subject to different codes; therefore KCC 21A.44.030.C does not apply here. In addition, the Crecca's case history and site constraints are different from the Johnson's. The facts in Variance Decision L01VA087 show that Crecca's site was cleared before November 27, 1990, the effective date of the Sensitive Area Ordinance amendments that apply to the instant case. The variance criteria in place at that time did not require conformance with CC&Rs. The Crecca property had a buildable area on the upper terrace of that site, but it was inaccessible due to short plat restrictions. The approved Crecca variance resulted in a reduced house size from the original proposal, and required mitigation of buffer impacts. The Crecca variance decision was never appealed to the Examiner.
18. Another abutting lot owner (Auger) expresses support for the application. Exhibit No. 16, letter dated February 26, 2003. Mr. Auger would like to see the proposed residence outside of the required side yard setback of 30 feet to assure his privacy. DDES is neither requiring nor asking the applicant to construct within any required site yard setback. Mr. Auger's residence was constructed prior to the effective date of Sensitive Areas Ordinance amendments of 1990 which now apply to the Johnson application.
19. Extensive discussions of the stream buffer functions occurred during the hearing, focusing on large woody debris (LWD) recruitment to the river. According to the Washington Department of Fish and Wildlife, salmonid fish present above Snoqualmie Falls and expected in the Middle Fork Snoqualmie include cutthroat trout, rainbow trout, eastern brook trout, mountain whitefish, and potentially bull trout (listed as threatened under the Endangered Species Act). LWD

recruitment can provide habitat that benefits these salmonid species. The beneficial functions of LWD in stream channels to aquatic habitat, including salmonids, are well documented in the scientific literature. LWD functions primarily to increase channel complexity and flow heterogeneity (variety or mixture) by 1) anchoring the position of pools along the thalweg, 2) creating backwaters along the stream margin, 3) causing lateral migration of the channel, and 4) increasing depth variability. LWD in the river channel also provides both instream and overhead cover for salmonids, which provides hiding places from predators.

20. LWD recruitment is important at this site because there is a documented shortage of LWD in the Lower Middle Fork that negatively affects the quality of fish habitat. This lack of LWD is documented in exhibit no. 5 by the Water Resource Inventory Area (WRIA) 7 Snohomish Basin Salmonid Recovery Technical Committee in their Snohomish Basin Salmonid Habitat Conditions Review (September 2002); in exhibit no. 7, the Washington Conservation Commission WRIA 7 Limiting Factors Report (January 2003, page 200 Riparian Conditions Table); and in exhibit no. 6 Figure 3.59, of the U.S. Forest Service Middle Fork Snoqualmie Watershed Analysis (1998). These documents note that the Lower Middle Fork Snoqualmie (defined as river mile 1-16 and including the subject property) has degraded riparian areas (with a low percentage of mature forest) and degraded instream habitat due to low numbers of LWD in the channel. The Conservation Commission's Limiting Factors Analysis "action recommendations to benefit resident salmonids upstream of Snoqualmie Falls" include restoring riparian function where impaired (Exhibit 5, page 202). Thus it is important to protect the remaining forested buffers along the Middle Fork Snoqualmie River, and not to preclude reforestation of the full code-required 100-foot buffer width.
21. Exhibit 4, Section 3.9, describes the eight vital functions of riparian vegetation that affect the quality of salmonid habitats as well as providing habitat for a variety of terrestrial plants and animals. In addition to providing LWD, riparian vegetation provides shade, bank stabilization, sediment control, organic litter, nutrients, microclimate (cooler temperatures), and wildlife habitat.
22. The parties do not agree as to the actual number of trees that would need to be removed to construct a residence at either Location B or Location C. Areas of disagreement include the number and size of trees in either location, and the number of trees removed during the unpermitted logging operation on the site following a 1999 windstorm. The parties agree, however, that those trees located closer to the river are more likely to provide LWD and other buffer functions than those farther away.
23. Allowing the proposed residence, its septic tank and sand filter within the river buffer would have a negative long-term impact upon riparian and aquatic habitat of the river. Testimony, Finney, Casey.
24. KCC 21A.24 only protects those trees within the stream buffer, steep slopes, steep slope buffers, wetlands and wetland buffers on this site; not those trees that are exogenous to protected areas.
25. Granting a variance to allow construction of a residence in Location 'C' would eliminate the opportunity to reforest the existing (unpermitted) cleared area, approximately 20 feet by 60 feet, *within the stream buffer*. It would also pre-empt resolution of pending code enforcement case E9901457 on the subject property.

26. Exhibit no. 21, site plan of Wetland ‘B’ buffer impact at location ‘B’. The original site plan in exhibit no. 11 shows an approximately 10-foot wide driveway to the residence. Exhibit 21 for the wetland buffer impact shows the proposed driveway as 20 feet wide. The existing joint use driveway that would be shared by the Johnsons and Creccas is only 12 feet wide. A driveway crossing through a wetland is a permitted alteration under KCC 21A.24.330.N subject to certain criteria. Criterion 2 requires that all crossings minimize impact to the wetland and provide mitigation for unavoidable impacts. Therefore, the narrower driveway width would be permitted, not the wider width. Testimony, Casey.
27. Because a driveway crossing is a permitted alteration, the associated wetland buffer impacts would not be included in a buffer averaging evaluation as was submitted in Exhibit 21. At Location ‘B’, the majority of the buffer impact is a result of the proposed 20 foot wide driveway crossing (3,104 sq. ft. as shown by Mr. Burnstead on exhibit no. 21—a much wider driveway than actually would be allowed (see finding no. 26). Without including this number in the calculations, there is ample area to provide compensatory buffer through buffer averaging in Location ‘B’. Testimony, Casey and Sabour.
28. Additional relevant authorities:
- KCC 21A.24.320.A requires minimum buffers of undisturbed native vegetation around wetlands.
 - KCC 21A.24.320.B allows wetland buffer width averaging where it will provide additional protection to wetlands or enhance their function.
 - KCC 21A.24.330.N permits wetland driveway crossings subject to conditions.
 - KCC 21A.24.360.A requires minimum buffers from streams.
 - KCC 21A.24.360.B allows stream buffer averaging where it will provide additional natural resource protection.
 - Public Rule 21A-24-019 provides additional guidance on variances from buffer requirements.
 - Public Rule 21A-24-016 provides additional guidance for buffer averaging.
 - The criteria for reviewing and approving a variance from the zoning code are found at KCC 21A.44.030: A variance shall be granted by the county, only if the applicant demonstrates *all* of the following:
 - A. The strict enforcement of the provisions of this title creates an unnecessary hardship to the property owner;
 - B. The variance is necessary because of the unique size, shape, topography, or location of the subject property;
 - C. The subject property is deprived, by provisions of this title, of rights and privileges enjoyed by other properties in the vicinity and under an identical zone;

- D. The variance does not create health and safety hazards, is not materially detrimental to the public welfare or is not unduly injurious to property or improvements in the vicinity;
- E. The variance does not relieve an applicant from any of the procedural provisions of this title;
- F. The variance does not relieve an applicant from any standard or provision that specifically states that no variance from such standard or provision is permitted;
- G. The variance does not relieve an applicant from conditions established during prior permit review or from provisions enacted pursuant to K.C.C. 21A.38, Property-Specific Development Standards;
- H. The variance does not allow establishment of a use that is not otherwise permitted in the zone in which the proposal is located;
- I. The variance does not allow the creation of lots or densities that exceed the base residential density for the zone by more than 10 percent;
- J. The variance is the minimum necessary to grant relief to the applicant;
- K. The variance from setback or height requirements does not infringe upon or interfere with easement or covenant rights or responsibilities; and
- L. The variance does not relieve an applicant from any provisions of K.C.C. 21A.24, Sensitive Areas, except for the required buffer widths and building setbacks set forth in K.C.C. 21A.24.200, 21A.24.280, 21A.24.310, 21A.24.320, or 21A.24.360.

CONCLUSIONS:

1. First, we will address the vesting issue raised by Applicant/Appellant Johnson. Johnson cites two cases, *Noble Manor v. Pierce County*, 133 Wn. 2nd 269 (1997) and *Association of Rural Residents, et al v. Kitsap County, et al*, 141 Wn. 2nd 185. (2000). Neither case applies here.

In the case of *Noble Manor*, the Applicant filed a short subdivision application for “four duplexes.” Pierce County, in its short subdivision review documents, *acknowledged that purpose*. Unlike King County, Pierce County at that time had no “completed application” provision to trigger vesting, thereby leaving an indeterminate grey area with respect to when to consider the application complete and vested—a matter which the court cleared up. Further, unlike the instant case, Pierce County had actually issued the building permits of concern (then later attempted to stop construction). Unlike the instant case, the court’s decision hinged critically upon the fact that the permit applications at issue were *based on the language contained in the recorded subdivision*. The court’s decision was consistent with later decisions affirming that an Applicant is entitled to vesting pursuant to the laws in effect at the time of a complete preliminary plat application when the plat applicant and developer of the plat are the same and both the platting and the developing are an obvious sequential unfolding of the same plan disclosed and acknowledged to the land use jurisdiction at the time of subdivision application. In the Johnson’s case, they are not the short subdivision applicant and, moreover, come along more than a decade past short subdivision recording. Moreover, the *Noble Manor* court’s reliance on language contained in the recorded subdivision affirms the correctness of the Department’s steadfast defense of the 100 foot wide river buffer.

Nor does *Rural Residents* apply here. In that case, an applicant filed a completed preliminary application together with an application for approval of a proposed planned unit development. The plat and PUD were “inextricably linked.” The court found that the vested rights doctrine applies to situations in which property is being developed, not merely divided. Of course, no one endeavored to develop the subject property at the time it was divided—as was the case in *Rural Residents*. The court referred to a Division One decision, *Schneider Homes, Inc. v. City of Kent*, 87 Wn. App. 774, which said very much the same thing: “When a preliminary plat application is coupled with a PUD application, the developer has a vested right in having all the ordinances in effect at the time of filing applied to the proposed development.” The Johnson situation is not remotely similar.

2. The law and doctrine of takings also has been cited by the Applicant, particularly with respect to the corollary doctrine of rough proportionality. The Department argues that the examiner has no authority or jurisdiction to consider constitutional issues. Since its inception, 33 years ago, the Office of the Hearing Examiner has routinely addressed such issues as takings when they do not concern a facial challenge to the ordinance that applies and when the decision to be made concerns a discretionary matter such as a conditional use permit or variance. In such cases, it is incumbent upon the hearing examiner to interpret the code and the application of the facts to that code in a manner which avoids constitutional problems. *State v. Crediford*, 130 Wn. 2d 747, 755.

Be that as it may, we are unaware of any decisions regarding variances pinned upon the doctrine of rough proportionality cited by the Johnsons. In this case of a variance application, unlike the cited cases dealing with rough proportionality, *the Applicant is seeking an exception (variance) from the adopted code that applies*. We will not make new law here regarding such a claim. As the Department’s counsel property notes, the examiner has no such authority.

3. The Johnsons also raise the constitutional issue of equal protection. In so doing, they cite the development of two other lots within the same subdivision. One, Crecca, was developed pursuant to a variance approval; the other, Auger, does not. Since development of the Crecca and Duger properties, the County has revised its regulations affecting protected sensitive areas and, equally importantly, has revised the standards for variance approval.

In the Crecca variance decision, different variance criteria applied, as well as different facts regarding the property. Access to the building site would require crossing of a sensitive areas and native growth protection easement (NGPE). Crossing of the NGPE to access the upper topographic bench with a driveway would have required an alteration of the short plat—a concern which has never been addressed in the Johnson’s arguments and a fact that does not exist in this record. Finally, we doubt that the equal protection issue applies here. When the Johnsons have opportunity to develop the property without encroaching within the 100 foot wide river buffer they certainly have no equal protection right to encroach within that buffer in the same manner as someone who did not have that alternative available.

4. An oft repeated theme in the Johnson appeal concerns the fact that the home development site preferred by the Johnsons will require the removal of fewer trees than the “minimum necessary” alternative site identified in the Applicant’s drawings and supported by the Department. The Johnsons imply that these facts will cause development of the DDES-preferred site to carry a greater environmental impact than the Johnson-preferred site. That, however, is not how the

sensitive areas code (KCC 21A.24) is written. The several trees which the Johnsons seek to preserve are not code-protected trees. The Johnson-preferred site, regardless of whether it has been storm damaged and unlawfully cleared by the property owner selling to the Johnsons, is a protected area. In short, the County Council and the sensitive areas code place far greater value on the trees within the 100 foot wide buffer area than it does on the trees which the Johnsons seek to preserve. In DDES staff ecologist Laura Casey's words, "they are not protected." And, as the Department's counsel argues, the examiner cannot rewrite the sensitive areas protection ordinance based on which building site is "perceived" to have less impact. In essence, the Appellants argue that they should be allowed to build within the stream buffer because it is less vegetated than the portion of the property that is not subject to sensitive area buffer protection requirements. There are several variance criteria, but that is not one of them.

5. Enforcement of the sensitive areas code and zoning code in this case does not create an unnecessary hardship to the property owner. First, Johnsons are not the property owners. Second, it does not create a hardship. The evidence of record demonstrates that a home may be constructed on the property, consistent with applicable restrictive covenants, either without obtaining a variance or without obtaining a variance as drastic as the one sought by the Johnsons.
6. A variance is not necessary because of unique size, shape, topography or location of the subject property. Unlike the Crecca case, for example, a variance is not necessary to make the property accessible. A house can be constructed on the site without a variance of the degree and scale sought by the Johnsons. That is the alternative site recommended by the Department. Neither the subject property nor the variance decision below deprives the Johnsons of rights and privileges enjoyed by other properties in the vicinity. Crecca and Auger have houses. The Johnsons will too, if they choose to move forward with this project. As noted above, the Crecca variance decision concerned quite dissimilar facts and circumstances as well as a somewhat different review criteria.
7. Even if a variance-free development of the DDES preferred building site is not possible, it nonetheless manifestly demonstrates that the Johnson proposal is not the "minimum necessary." Regardless of whether only 800 square feet are available which are unrestricted by setbacks or buffers (as the Johnsons contend) or a larger 2,000 square foot area (as DDES contends) the evidence of record overwhelmingly demonstrate that the DDES-preferred site would consume less protected sensitive area (if you accept Johnsons assertions) or no consumption of sensitive area (if you accept DDES assertions). In short, the facts surrounding Alternative 'B'—*it does not incorporate the triangular buildable area, regardless of its size*—unequivocally underscore the fact that the Johnson-preferred site is not the "minimum necessary."
8. The reader may notice that we have not given much attention in the considerable testimony and argument in the hearing record regarding the Department's allegations of code violation and pending code enforcement action against the party which intends to sell the subject property to the Johnsons. Not much need be given. The code enforcement matter may be resolved by prosecution of a notice and order against the property owner or by voluntary compliance (which may occur as a matter of building permit issuance). Regardless of whether the cleared area (and we do mean "cleared"; it has no duff layer) is adjudicated with respect to the code enforcement claims, it is nonetheless a protected sensitive area buffer. It can and will be restored to the extent required by applicable sensitive areas and grading codes.

9. KCC 21A.44.030.G prohibits a variance that relieves an applicant from conditions established during prior permit review, such as the 100 foot wide river protection setback established by short subdivision on the subject property. The Johnsons have failed to resolve the conflict between this variance criterion and their preferred development site location.

Likewise, the Johnsons do not respond to KCC 21A.44.030.K which prohibits a variance from being granted when the proposal infringes upon or interferes with covenant responsibilities—in this case, the 100 foot wide river setback contained in the CC&Rs that apply here. They do not respond because, we suspect, they cannot.

10. For the reasons stated in the conclusions above, the Applicant's proposed development site (location 'C') fails to meet the criteria for variance approval established by KCC 21A.44.030.
11. The variance decision below does not preclude development of the subject property at location 'B' in a manner consistent with the rights of enjoyment exercised by neighboring property owners. For the reasons stated in the conclusions above, development of the DDES-preferred site (location 'B') will result in the minimum necessary variance from code.

DECISION AND ORDER:

The appeal is DENIED. The variance request to construct at the Johnson-preferred site, is DENIED. Should the Alternative 'C' site be pursued by the Applicants, it may or may not require variance. We are uncertain due to the buildable area dispute between the parties, which is unresolved here. See conclusion nos. 4, 6, 7 and 11.

RECOMMENDATION:

In past decisions we have set the minimum necessary footprint area, *including garage area*, at the average for the neighborhood. In the administrative review that may result from the decision following, that would be a useful, albeit generous, guideline to follow. See, for instance, the examiner's revised report and decision, dated July 3, 2002, regarding James (Randy) Newell, DDES file nos. L99VA006 and L99VA003. This practice, because of its flexibility, appears more defensible than, for instance, Public Rule 21A-24-019(c)(3)(a), which sets a 3,000 square foot limit on total disturbed area when a lot comprises less than 30,000 square feet. See examiner's report and decision dated August 20, 2002, regarding the code interpretation appeal of John O'Neill. The subject property incidentally, comprises four acres.

ORDERED this 21st day of May, 2003.

T. T. Titus, Deputy
King County Hearing Examiner

TRANSMITTED this 21st day of May, to the parties and interested persons of record:

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NOTICE OF RIGHT TO APPEAL

The action of the hearing examiner on this matter shall be final and conclusive unless a proceeding for review pursuant to the Land Use Petition Act is commenced by filing a land use petition in the Superior Court for King County and serving all necessary parties within twenty-one (21) days of the issuance of this decision.

MINUTES OF THE FEBRUARY 27, MARCH 31 AND APRIL 7, 2003 PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L02VA003

T. T. Titus was the Hearing Examiner in this matter. Participating in the hearing were Sherie Sabour, Randy Sandin, Cass Newell, Laura Casey, Don Finney, Richelle Rose and Bruce Whittaker, representing the Department; Eric Stahlfeld, representing the Appellant; Cory Johnson, Larry Bernstad and Keith Scheunemann.

The following exhibits were offered and entered into the record:

- Exhibit No. 1 DDES File No. L01VA003, *Not Admitted Into the Record*
- Exhibit No. 2 DDES Variance Report and Decision dated September 30, 2002
- Exhibit No. 3 Sensitive Areas Report dated February 25, 2002 prepared by Watershed Dynamics, Inc.
- Exhibit No. 4 Excerpt from an Ecosystem Approach to Salmonid Conservation dated December, 1996; prepared by Brian C. Spence, et al., Management Technology, pages 51-55

- Exhibit No. 5 Excerpt from Snohomish River Basin Salmonid Habitat Conditions Review dated September 2002 prepared by Snohomish Basin Salmonid Recovery Technical Committee, pages 1-23, 97-100 and 154-165
- Exhibit No. 6 Excerpt from Middle Fork Snoqualmie River Watershed Analysis dated February 19, 1998, prepared by Mt. Baker-Snoqualmie National Forest North Bend Ranger District, pages A-1, 3-81, 3-85 and 4-15
- Exhibit No. 7 Excerpt from Salmonid Habitat Limiting Factors Analysis for Snohomish River Watershed Water resource Inventory Area 7 Final Report dated December 2002, Prepared by Washington State Conservation Commission, Donald Haring, pages 3 and 198-202
- Exhibit No. 8 Laura C. Casey Statement of Qualifications
- Exhibit No. 9 Donald E. Finney Statement of Qualifications
- Exhibit No. 10 Site plan showing two alternate locations A & B
- Exhibit No. 11 Applicant request showing location C
- Exhibit No. 12 Declaration of Covenants, Conditions and Restrictions for Snoqualmie Riverfront Estates
- Exhibit No. 13 Site Plan for a 5' square grid done by (excerpt from Cory Johnson)
- Exhibit No. 14 Aerial photograph
- Exhibit No. 15 Photographs of the site (#'s 9-11 missing)
- Exhibit No. 16 Letter from Bertrand Auger to Hearing Examiner dated February 26, 2003
- Exhibit No. 17 Copy of map and photographs from DDES file
- Exhibit No. 18 Letter to Hearing Examiner from Bertrand Auger dated November 29, 2002
- Exhibit No. 19 Letter to Hearing Examiner from Bertrand Auger dated December 5, 2002
- Exhibit No. 20 Map of the plat produced by Residential Design Services

The following exhibits were offered and entered into the record at the March 31, 2003 hearing:

- Exhibit No. 21 Map of location B buffer averaging
- Exhibit No. 22 Map of location C buffer averaging
- Exhibit No. 23 Conceptual drawing by Larry Bernstad
- Exhibit No. 24 Report and Decision on DDES File No. L91VA087/Joseph Crecca
- Exhibit No. 25 Assessor's map
- Exhibit No. 26 Letter to Keith Scheunemann from Paul Meyer regarding case no. E9901457 dated May 4, 2000
- Exhibit No. 27 *Not Admitted into the Record* - Letter to Keith Scheunemann from Richelle Rose regarding case no. E9901457 dated January 22, 2003
- Exhibit No. 28 Declaration of Covenant for Short Plat – Snoqualmie Riverfront Estates
- Exhibit No. 29 Letter to Sherie Sabour from Eric R. Stahlfeld dated January 22, 2003
- Exhibit No. 30 Memo to R.S. Titus from Sherie Sabour dated January 28, 2003
- Exhibit No. 31 Statement of Appeal
- Exhibit No. 32 Applicant's justification for variance
- Exhibit No. 33 Elevation of the structure
- Exhibit No. 34 Report to the Hearing Examiner from DDES
- Exhibit No. 35 Request to view property & email to Sherie Sabour, Laura Casey and Don Finney from Richelle Rose dated March 26, 2003
- Exhibit No. 36 Printout from Permits Plus
- Exhibit No. 37a Site drawing (guide to 37b)
- Exhibit No. 37b Photographs

- Exhibit No. 38 GIS photograph
- Exhibit No. 39 1992 Walker & Associates Aerial Photograph
- Exhibit No. 40 1990 Walker & Associates Aerial Photograph

The following exhibits were entered into the record at the April 7, 2003 hearing:

- Exhibit No. 41 Letter to Sherie Sabour from John R. Day dated June 21, 2002
- Exhibit No. 42 Comments taken from the Pre-application A02P0029 filed by the Johnsons
- Exhibit No. 43 On-site sewage disposal design prepared by D.R. Strong
- Exhibit No. 44 Memo to Sherie Sabour from Laura Casey dated June 13, 2002 addressing Applicant's proposal for buffer averaging
- Exhibit No. 45 Photographs (9) taken of the Riverbank Area and River at the Edge dated January 9, 2003
- Exhibit No. 46 Aerial photographs taken October 13, 1989

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